

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : Docket #20-CV-2593
Plaintiff, :
-against- :
ANTHEM, INC., : New York, New York
Defendant. April 11, 2023

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PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE

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E X A M I N A T I O N S

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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

1 THE DEPUTY CLERK: Calling case 20-cv-2593,
2 USA v. Anthem.

Beginning with counsel for the plaintiff,
please make your appearance for the record.

5 MR. JACOB: Good morning, Your Honor.

6 Charles Jacob for the United States. I am here with
7 my colleagues AUSA Zach Bannon, Adam Giltin, Dana
8 Walsh Kumar, and Rebecca Tinio.

9 THE COURT: Hi.

10 THE DEPUTY CLERK: And the counsel for the
11 defendant, please make your appearance for the
12 record.

13 MR. BLALACK: Good morning, Your Honor.
14 Lee Blalack, lead counsel for the defendant, here
15 with my colleagues David Deaton, Jim Bowman, Valerya
16 Cohen, and John Martin.

17 THE COURT: Okay. Hi, everyone.

18 So we're here for an initial case
19 management conference. I see you already have some
20 disputes about the schedule, and I want to talk
21 about that. I'd like to hear a little bit more
22 about the case from the Government, and it seems as
23 if there's a Massachusetts action that may be
24 related.

25 Is there information in that that's been

1 exchanged in that case that may be relevant in this
2 case? Why don't plaintiffs start?

3 MR. JACOB: Sure. Thank you, Your Honor.

4 This case is principally about how Anthem
5 came to learn through a retrospective review of its
6 medical records for its beneficiaries that diagnoses
7 that it had submitted to the Government were not
8 supported. And we actually don't think there's too
9 much in dispute about how that program operated.
10 And we would like discovery -- and we think
11 discovery should be really focused in this case.

12 There is a related litigation out in
13 California where the United States has brought a
14 case against another Medicare Advantage
15 organization, United.

16 THE COURT: Okay.

17 MR. JACOB: One of the reasons why we think
18 discovery can be streamlined in this case is that
19 the Government has already collected a significant
20 number of documents in that case that we can try and
21 leverage here to make efficient productions to
22 Anthem.

23 THE COURT: Even though it was a different
24 company?

25 MR. JACOB: It's a different company. So

1 what Anthem is seeking discovery on is the issue of
2 materiality from the Government. And so the
3 materiality issues are similar, and the collections
4 of the relevant custodians are similar, because the
5 Government is intending to prove at trial that these
6 submissions were material to the Government's
7 payment decisions.

8 So we do need to offer evidence on that,
9 and the Anthem is entitled to some discovery on
10 that, but we think it needs to be focused and
11 streamlined, consistent with Judge Carter's decision
12 in this case and the motion to dismiss, which
13 already defined what the legal standard should be on
14 materiality.

15 THE COURT: Okay. So the computer -- it's
16 a computer program that goes through the bill; is
17 that right?

18 MR. JACOB: So the program that Anthem
19 operated was a review of medical charts. So they
20 had vendors as employees look through medical charts
21 and find additional diagnoses codes, which led to
22 more money being paid to Anthem by --

23 THE COURT: So there were actual people
24 doing that? It wasn't a computer program?

25 MR. JACOB: Yes.

1 THE COURT: All right. And then these --
2 so these individuals who went through what you're
3 saying might have realized, oh, this code was
4 improper, at the same time they were reviewing and
5 saying, oh, we also need to submit for this code?

6 MR. JACOB: Yes. It's a little slightly
7 different. What we allege is that Anthem learned
8 through that program that codes it had previously
9 submitted to the Government were not actually
10 supported by the medical documentation. And what
11 Anthem did was continue to attest to the Government
12 that its submissions were accurate. And what it
13 also did was it failed to delete those unsupported
14 codes in violation of the False Claims Act.

15 THE COURT: So was it the same vendor that
16 reviewed Anthem's submissions as reviewed United's
17 submissions? I'm a little unclear as to why there
18 would be overlap since it's a different company.

19 MR. JACOB: Yeah, of course. So the
20 discovery from Anthem is going to be different than
21 the discovery took from United in that case. What
22 we're thinking is similar is the discovery to be
23 taken from the Government. So in other words,
24 Anthem's discovery request to the Government.

25 THE COURT: I see. I see.

1 What you already -- what the Government
2 produced would be the same to Anthem?

3 MR. JACOB: Yes. And it's true that we did
4 conduct an investigation of Anthem before bringing
5 this suit, so we do have a fair amount of documents
6 that we would like to, you know, make use of that
7 and not require the duplication of efforts.

8 THE COURT: Right.

9 MR. JACOB: So we want to focus on
10 discovery on the aspect that we really need, which
11 for example, is the database that Anthem has. It's
12 pretty technical, but that should reflect the
13 diagnosis codes that it didn't delete and will allow
14 the Government to identify the full population of
15 false claims here.

16 THE COURT: And for the database, what
17 period of time are you looking to cover?

18 MR. JACOB: Our relevant time period is
19 2014 to 2018.

20 THE COURT: Okay. And have you already had
21 conversation with defense counsel about production
22 of that database?

23 MR. JACOB: We've had initial conversations
24 during a Rule 26(F) conference. We brought it up
25 during some more meet and confer emails yesterday.

1 You know, we're going to serve our formal document
2 request by, we expect, early next week.

3 THE COURT: So that data really is going to
4 be the key? That's the key evidence from the
5 Government's standpoint?

6 MR. JACOB: Yeah, that's part of the key
7 evidence for the claims and damages. We are going
8 to take some discovery relating to Centre as well,
9 the company's knowledge and instructions of the
10 program and how it worked and how the company came
11 to learn that these claims were unsupported.

12 THE COURT: And I saw that you wanted or
13 both parties were thinking there would be 35
14 depositions on each side. That's a lot.

15 Who are the witnesses? Have you already
16 talked about custodians and -- custodians and
17 witnesses? There'll be some overlap, but there may
18 not be complete overlap?

19 MR. JACOB: Yeah, and to be clear, just one
20 point, we're fine with fewer depositions. Anthem
21 requested 35. Our proposal was 25, but as an
22 accommodation to Anthem's request, we agreed to 35.
23 And the same with respect to the interrogatories as
24 well and the proposed 35. We were fine with 25.

25 THE COURT: Okay.

1 MR. JACOB: But, yeah, we've exchanged
2 Rule 26 disclosures that identify -- the parties
3 have already done that, that identify witnesses on
4 both sides.

5 THE COURT: Okay. And so just to enlighten
6 me a little bit more, who are these witnesses? Are
7 they some of the reviewers?

8 MR. JACOB: Yeah.

9 THE COURT: And then there were -- at the
10 vendor, and then people at Anthem who were the
11 decision makers about the submissions?

12 MR. JACOB: That's fair. We're looking for
13 the individuals at Anthem who designed and operated
14 the chart review program, who had knowledge relating
15 to the representations that Anthem made to CMS, as
16 well as the vendor that actually operated that
17 program, which will be third-party discovery.

18 THE COURT: Right. Okay.

19 MR. JACOB: But we think 14 months is more
20 than enough time to accomplish this task for both
21 parties.

22 THE COURT: And the expert discovery that
23 you're anticipating, are you anticipating there'll
24 be an expert who will look at that data? Sort of a
25 data expert.

1 MR. JACOB: Exactly.

2 THE COURT: And any other kind of expert?

3 MR. JACOB: Not from the Government's
4 perspective. We expect that expert to provide
5 additional analysis on top of the data, but it'll
6 be, we expect, one expert from the Government's side
7 currently.

8 THE COURT: Okay. All right. I'll come
9 back to you.

10 But let me hear next from Anthem in terms
11 of, overall, what it's thinking for discovery.

12 MR. BLALACK: Good morning, Your Honor.
13 Lee Blalack for the defendant. So let me just put
14 the context of our defense into some perspective.
15 There'll be a lot of little factual defenses.

16 We don't agree, for example, that the
17 results of the chart reviews, which is what they're
18 called, the medical record reviews that my opposing
19 counsel identified, showed that Anthem had knowledge
20 of unsupported diagnosis codes that had been
21 submitted to CMS. That's going to be a factual
22 question that the parties will have to work through.

23 In other words, the fact of those chart
24 reviews and what they produced will not answer the
25 question definitively as suggested here, that Anthem

1 had knowledge that there was a diagnosis code
2 submitted to the Government that's not supported.
3 So that's kind of a preliminary factual question
4 that will be disputed.

5 THE COURT: What are the qualifications of
6 the people who do these reviews?

7 MR. BLALACK: They're vendors who are
8 coders, certified coders. So they --

9 THE COURT: People whose title -- job title
10 is coder?

11 MR. BLALACK: They're certified -- they're
12 trained as coders.

13 THE COURT: And what does that mean? What
14 is their background? Is it in healthcare? Is it in
15 billing?

16 MR. BLALACK: Well, there's an entire
17 industry, Your Honor, of coders who work in
18 healthcare because they have to translate what a
19 doctor writes in a medical record into a claim that
20 gets submitted to a payer either in commercial
21 health insurance or in a Government health plan.

22 THE COURT: So these coders are looking at
23 actual doctors' notes.

24 MR. BLALACK: Correct. They look at a
25 medical record, and then based on the coding

1 rules -- and there are coding rules that will be --
2 I suspect, at the end of the day, some of those,
3 many of those may be disputed before the case is
4 over.

5 They will apply those rules to the medical
6 records, and they will record their views of what
7 diagnostic conditions can be recorded from the
8 medical record, and then they'll report that to --
9 in some documentation or database. And then that's
10 then used --

11 THE COURT: These are not people who are
12 nurses or doctors?

13 MR. BLALACK: There might be, but that's
14 not a requirement.

15 THE COURT: It's not a job requirement?

16 MR. BLALACK: Correct. There is an entire
17 industry with trade associations and everything of
18 thousands and thousands of people who work as
19 diagnostic or procedural coders.

20 THE COURT: I'm just trying to get a little
21 bit more understanding of it because it's not my
22 industry.

23 MR. BLALACK: Sure. Sure.

24 THE COURT: So these individuals are
25 looking -- as part of this chart review, they're

1 looking at individual patients and their doctor's
2 notes?

3 MR. BLALACK: Correct.

4 THE COURT: And then they're going to look
5 at codes that were submitted and that were not
6 submitted? How does that work?

7 MR. BLALACK: No, they simply look at the
8 medical record without any knowledge of what has or
9 has not been submitted to CMS. And then they
10 record, based on that review, in their judgment,
11 what information the medical record supports in the
12 way of a code.

13 THE COURT: Okay. And so that would be,
14 say, certain tests, certain other kinds of services?

15 MR. BLALACK: It could be based on
16 laboratory information. It could be other --
17 there's a very arcane, detailed set of rules that
18 govern how you can record a diagnosis generally and
19 in connection with the Medicare Advantage or
20 Medicare programs.

21 So, for example, the guidance that the
22 United States issues or that CMS issues, 115
23 single-space pages of detailed guidance. So it is
24 information that coders use, along with other trade
25 association guidance issued by the American Hospital

1 Association, the American Coders Association, who
2 take all of that, like any other profession, look at
3 the record and say, based on this record, I find
4 these conditions can be reported as diagnosed
5 conditions based on the doctor's medical record.

6 THE COURT: Okay. So when they -- so they
7 evaluate. In their discretion, they come up with
8 codes based on their training and this guidance.

9 MR. BLALACK: Correct.

10 THE COURT: And then what do they do as
11 part of this chart review?

12 MR. BLALACK: They just report it.

13 THE COURT: Report it how?

14 MR. BLALACK: They report it usually into a
15 database that then gets ultimately compiled and
16 submitted to the client. In this case, it would be
17 Anthem. But these are vendors that work for every
18 health insurer who participates in these programs in
19 the country.

20 THE COURT: And so they put it into the
21 database, they send it to Anthem, and then is there
22 somebody at Anthem that then looks at it, or is
23 there a computer algorithm that looks at it? What
24 happens?

25 MR. BLALACK: It depends, and it changed

1 over time, Your Honor. The evidence will show that
2 depending on the time period and the program at
3 Anthem, it evolved in varying ways that will be
4 highlighted in discovery.

5 But sometimes there was a computer
6 extraction of which codes the chart review vendor
7 found were not on file with CMS, and then those
8 could be submitted under CMS guidance. CMS
9 specifically authorizes the submission of what's
10 called Risk Adjustment Data, diagnostic data to the
11 Government through chart review programs.

12 THE COURT: What does that mean in plain
13 English?

14 MR. BLALACK: It means that CMS
15 contemplates that health insurers like Anthem or
16 United, which is the target of another action by the
17 United States, or Kaiser or Humana can use a process
18 called retrospective chart review, which is the
19 process -- the corporate practice that's in dispute
20 in this case, to go out and mine medical records of
21 their members to see if there are conditions,
22 diagnostic conditions, that the doctor did not
23 report in a claim form at the time of the encounter,
24 but that should have been reported.

25 THE COURT: Okay. And if another -- so if

1 there's another diagnosis, somebody had diabetes
2 that wasn't reported --

3 MR. BLALACK: The doctor didn't write it
4 down, but the record establishes that the person has
5 diagnosed diabetes.

6 THE COURT: And so then that will justify
7 payment for additional --

8 MR. BLALACK: Correct.

9 THE COURT: -- tests or medications or
10 visits?

11 MR. BLALACK: Well, Medicare Advantage --
12 Medicare Advantage doesn't pay on procedures or
13 services. So you don't get paid for having rendered
14 care to a member. You are paid as a Medicare
15 Advantage organization for assuming the risk of
16 future cost of care in the next year. You submit a
17 bid. You anticipate what the cost of that care will
18 be. It's a very complex formula that I won't bore
19 the Court with. A payment is established, and then
20 it can be adjusted. It's called risk adjustment.

21 THE COURT: So if there's more diagnoses,
22 you get paid more?

23 MR. BLALACK: Correct. Well, of a certain
24 type, Your Honor. There are some diagnoses that
25 don't have any impact on risk adjustment at all.

1 There are some, like the example you used, diabetes,
2 that would.

3 So if a doctor did not record diabetes in
4 the claim information for that patient, even though
5 Anthem had accepted the risk of care for diabetes in
6 the coming year for that member because they bid for
7 all of the cost of the medical care under Medicare
8 Advantage for that member, they would not get that
9 reimbursement. The chart review would identify that
10 misdiagnosis of diabetes, would submit it, and then
11 that risk would be properly accounted for in the
12 reimbursement. That's how the system is designed to
13 work.

14 THE COURT: So Anthem, once it gets the
15 information from its vendor, looks at the codes,
16 compares it against what codes were already
17 submitted, and then submits the differential, the
18 ones that weren't previously submitted?

19 MR. BLALACK: Correct. And that is a
20 recognized and authorized practice by CMS that every
21 health plan that participates in Medicare Advantage
22 uses. And many of them use vendors. Some will use
23 internal employee coders; others will use vendors,
24 as in the case of Anthem in this dispute.

25 THE COURT: And you said that there's a

1 computer? Once these codes are put into the
2 computer, it's a computer that compares what was
3 submitted and what previously was --

4 MR. BLALACK: I think the evidence will
5 show it depended on time, Your Honor. I mean, this
6 was --

7 THE COURT: So this case is involving 2014
8 through '18.

9 So what period of time were you using
10 humans versus --

11 MR. BLALACK: Right. I think there will
12 be -- because it was not as centralized and as
13 organized as the United States implies, I think
14 there will be some instances where a human might
15 have done the comparison, but most of that time
16 period is going to involve a computer comparison
17 between the file provided by the vendor and the file
18 that's submitted to the Government.

19 THE COURT: I see.

20 And so the people of the vendor were
21 looking at these charts and coming up with the codes
22 in their discretion based on the guidelines?

23 MR. BLALACK: Correct.

24 THE COURT: They're never knowing what was
25 previously submitted; they're only doing an

1 independent review.

2 Is that how it works?

3 MR. BLALACK: That's the theory. I mean, I
4 can't represent for every one of them.

5 THE COURT: I'm not asking the theory. I'm
6 asking what was done at Anthem.

7 MR. BLALACK: Yeah. I have no knowledge of
8 anybody at the vendor who had knowledge of anything
9 on file with CMS. They were looking at medical
10 records and just doing a blind code.

11 THE COURT: They're just -- okay.

12 So it's just a second review of records,
13 basically?

14 MR. BLALACK: Well, it's the first review
15 of the medical record, because the way the original
16 data gets submitted, it comes in in a claim. So the
17 doctor in his office or her office send a claim
18 form.

19 THE COURT: I see.

20 MR. BLALACK: And there's a diagnosis code
21 listed. There's no medical record. It's just in a
22 claim form representing this code exists.

23 THE COURT: I see.

24 MR. BLALACK: That's what gets submitted to
25 CMS through various data systems.

1 THE COURT: I see.

2 MR. BLALACK: But there's not a -- that
3 could be --

4 THE COURT: So that -- the first claims and
5 codes submitted are actually by the doctor's office?

6 MR. BLALACK: They come through Anthem, but
7 the original diagnosis code originates with the
8 physician's medical group or whoever does the
9 billing for the physician.

10 THE COURT: And then somebody unattached to
11 the actual doctor's office reviews.

12 MR. BLALACK: The medical record.

13 THE COURT: Sitting somewhere, someplace at
14 the vendor, reviewing the records, and coming up
15 with more codes?

16 MR. BLALACK: Correct. Identifies the
17 additional codes from the medical record.

18 THE COURT: And what has -- in the period
19 of time we're talking about, 2014 to 2018, how much
20 money did this differential represent to Anthem?

21 MR. BLALACK: I don't have that number in
22 my head, Your Honor. I don't know.

23 THE COURT: Do you have an approximation?

24 MR. BLALACK: Hold on one second. Probably
25 100 million per year, roughly, I would think.

1 THE COURT: Per year?

2 MR. BLALACK: Give or take.

3 THE COURT: 100 million per year
4 differential? It made a difference?

5 MR. BLALACK: But don't hold me to that
6 precise number. That's just a ballpark, Your Honor.

7 THE COURT: Yeah, I'm just asking.

8 MR. BLALACK: I mean, that is -- will be
9 subject of substantial discovery.

10 THE COURT: Of course.

11 Are you expecting there to be an expert on
12 that issue?

13 MR. BLALACK: I expect there will be an
14 expert on a number of issues. We'll have a damages
15 expert, Your Honor, once we see what the
16 Government's damages theory is and we have a view on
17 how to calculate damages and what's required.

18 We'll have experts on the program and how
19 it is intended to operate and what guidance the
20 agency gave and didn't give. We'll have experts on
21 some of the clinical coding issues that are involved
22 in the case, industry practices, those kinds of
23 things.

24 We'll have much more than one expert
25 because our core defense, Your Honor, is going to be

1 really three things: One, there's -- leaving aside
2 the dispute we have about whether the actual chart
3 review extract does or does not give Anthem
4 knowledge of an unsupported diagnosis code on file,
5 set that aside, even if it were true, our position
6 is we would not have knowledge under the False
7 Claims Act, under the *Safeco* line of cases from the
8 Supreme Court, because the guidance issued by the
9 United States does not prescribe the type of chart
10 review practices that the United States alleges were
11 required here.

12 And, in fact, the agency contemplated
13 issuing a regulation in 2014 requiring what the
14 United States alleges was required here, and the
15 agency withdrew that rule and did not issue it. And
16 the guidance that we expect the United States to
17 rely on for the obligation to conduct the program in
18 the way they say we should have, we will establish
19 was ambiguous, did not require clearly us to perform
20 the practice in that way, and that the
21 interpretation of the relevant regulatory standards
22 that we applied was objectively reasonable and that
23 we were never warned away from the type of
24 interpretation of the standard that we applied,
25 which is what the relevant knowledge defense

1 requires under the *Safeco* decision.

2 The second defense will be materiality
3 under the *Escobar* case, which basically says every
4 violation of a contract or regulation is not a
5 violation of the False Claims Act. You have to show
6 that the violation would have impacted the
7 Government's payment decision. There's reason to
8 believe that it would have. And we're going to
9 show, based on discovery from CMS, that it didn't
10 and wouldn't.

11 The agency not only knew about these
12 practices, but authorized them and never made any
13 decisions with respect to payment, either retracting
14 payment, pursuing overpayments, seeking to recover
15 payments that would suggest that their decision to
16 make a risk adjustment payment to Anthem was
17 impacted by this business practice.

18 And then our final defense will be damages.
19 And, again, it's a little unclear because we're not
20 exactly sure yet how the United States will prove
21 damage. But in the risk adjustment context, because
22 the payment is not based on a procedure -- it's not
23 you get paid for doing this; you get paid for
24 assuming risk -- there will be actuarial issues that
25 will factor into how you calculate damages in this

1 case.

2 THE COURT: And why do you need 35
3 depositions?

4 MR. BLALACK: Well, I mean --

5 THE COURT: I mean, it seems that you have
6 more of the information here than the Government.

7 MR. BLALACK: Yeah, that's where I think we
8 disagree, Your Honor. We're going to take or
9 pursue, with the Court's permission, a lot of
10 discovery from the United States.

11 THE COURT: So explain what that is.

12 MR. BLALACK: Well, we're going to take
13 discovery of the individuals at CMS and HHS-OIG at
14 least, the Office of Inspector General, who were
15 involved in issuing the guidance that's in dispute
16 here and establishing through their own
17 communications contemporaneously, at the time, and
18 through deposition testimony, that our view of what
19 those standards required and didn't require is
20 correct and that our understanding of those
21 standards is correct and that they were aware of
22 those practices.

23 THE COURT: In terms of the guidance, I
24 mean, doesn't the guidance speak for itself, or are
25 there other Government publications interpreting the

1 guidance or court rules interpreting the guidance?
2 I don't -- I guess what I'm trying to understand is
3 that any debate that happened prior to the issuance
4 of the guidance sort of is -- it ultimately resulted
5 in whatever was published, right, and statements
6 about it.

7 So what exactly are you seeking --

8 MR. BLALACK: Well --

9 THE COURT: -- from these regulators, I'll
10 call them --

11 MR. BLALACK: Sure.

12 THE COURT: -- of the Inspector General?

13 MR. BLALACK: Well, under the *Safeco*
14 defense, Your Honor, the communications of the
15 regulators regarding what their guidance was and
16 what they meant and whether the guidance was
17 ambiguous, whether they warned the defendant away
18 from the improper interpretation that the defendant
19 is offering, whether they knew about the industry
20 practice in question, which is relevant to
21 materiality, whether they took any action critical
22 of the practice, took any action to recover monies
23 paid based on the --

24 All of that is about the Government's state
25 of mind and the Government's conduct. And the

1 interesting thing here, Your Honor, is we're coming
2 along in this case with a long history of other
3 cases already on this practice. In the case of
4 the --

5 THE COURT: So then why can't you use that
6 testimony since there's been already been
7 depositions of some of these same people? So you
8 could use that testimony.

9 MR. BLALACK: And if, to my surprise, we
10 get all of the stuff from the *Poehling* case --
11 that's one of our first requests. Give us all the
12 material you produced in the *Poehling* case and that
13 may, in fact, shorten our -- or make our work easier
14 in terms of identifying the type of evidence we
15 need. And it may be that a lot of what we need is
16 in there, and they're going to give it to us.

17 I can tell you I'm litigating a case
18 against the United States right now in the Northern
19 District of California for the Kaiser Health Plans,
20 where there is -- it's not the exact theory, but
21 it's all about submission of false risk adjustment
22 data, the failure to correct what was alleged to be
23 incorrect risk adjustment data. And in that case,
24 we asked for the *Poehling* records and we got an
25 objection and a refusal to produce.

1 THE COURT: And this *Poehling* case is
2 pending where?

3 MR. BLALACK: In the Central District of
4 California.

5 And just to give you a sense, Your Honor,
6 so you understand how the scale of these cases are,
7 because they're incredibly complex and incredibly
8 document and witness intensive, the *Poehling* case
9 had five years and three months of fact discovery.
10 If it stays on the current trajectory for trial,
11 which is September of this year, it will have been
12 six years and two months from the first initial case
13 management conference to the trial date.

14 In the *Kaiser* case, the one I've got in the
15 Northern District, the United States and we agreed
16 on a schedule in that case. And in that case, the
17 agreed fact discovery period was two years and two
18 months.

19 THE COURT: But you now have quite a lot of
20 information about a lot of these processes, and so
21 you have some savings from that.

22 MR. BLALACK: And if that bears out, Your
23 Honor, that will certainly affect my view on this.
24 That has not been our experience so far in the other
25 cases. So if this case, the United States surprises

1 me, and all of a sudden we get a very open they're
2 going to share all the stuff from the *Poehling* case,
3 we're going to get that material, we can review
4 that, it might affect whether we do need that amount
5 of time.

6 But I haven't seen that, and we haven't
7 gotten their responses to our discovery requests
8 yet, and I have experienced objections to that same
9 discovery request in another case. So if, in fact,
10 we get all the stuff from the *Poehling* case and we
11 can rely on that record, I don't think it's going to
12 solve all our problems, but it will certainly make
13 our task easier and more efficient.

14 THE COURT: Do you know who all of the
15 deponents were in that case?

16 MR. BLALACK: We don't. I can tell you,
17 Your Honor, that in that case, in the *Poehling* case,
18 the United States has taken 31 deposition so far.
19 UnitedHealth, which is a Medicare Advantage
20 organization like Anthem, has taken 36, and they
21 have nine more to take. So they're going to end up
22 at 76.

23 In our case, in the Northern District of
24 California, the parties agreed on 150 depositions.
25 Now, that was inflated because we had some relator

1 qui tams along with the individual case by the
2 Government. So it's not a perfect analogue, but it
3 gives you a sense of the scale of the discovery in
4 these cases.

5 And, in fact, in the *Poehling* case, the
6 United States produced 3.6 million documents, and
7 United produced 2 million. So, again, if --

8 THE COURT: Okay. But I've got other cases
9 involving that volume of documents that don't take
10 six years.

11 MR. BLALACK: Well, and we certainly are --

12 THE COURT: Plenty of cases that involve
13 that many that don't take six years.

14 MR. BLALACK: And we certainly aren't --

15 THE COURT: Or five years.

16 MR. BLALACK: Right. And we're not
17 proposing six, Your Honor. What I'm trying to avoid
18 is a schedule where we know we're not going to hit
19 that. I can know just from prior experience, we're
20 not going to hit those targets. And each side is
21 then generating records about why we need an
22 extension and who's responsible, and that process
23 that creates work that's not useful for the parties.

24 THE COURT: Well, we're going to have
25 monthly conferences in this case.

1 MR. BLALACK: Well, that will help --
2 certainly help.

3 THE COURT: So it's not going to -- I'm
4 going to move the case along. We're going to have
5 monthly discovery conferences, and we're going to
6 try to avoid discovery motion practice. Under my
7 rules, if there's a discovery issue, you need to
8 write a letter. Actually, in this case, we'll have
9 agenda letters a week in advance.

10 They're not going to be arguments. They're
11 not going to be briefs. Sometimes parties get a
12 little over excited about these agenda letters. I
13 want them to just be agenda letters, not huge
14 arguments. If there needs to be briefing, we can
15 discuss that, and then there can be briefing. But I
16 just want the basic positions in these agenda
17 letters on issues. But we're going to have monthly
18 conferences. I'm going to keep this moving.

19 MR. BLALACK: Great. We welcome that, Your
20 Honor.

21 THE COURT: Okay. So --

22 MR. JACOB: Your Honor, if I may just
23 respond to a couple of points.

24 THE COURT: Yeah. I want to just talk
25 about some of these early issues that you flagged in

1 the proposal, but I'll hear next from the
2 Government.

3 MR. JACOB: So just a couple of points on
4 the *United* case and why it took so long. That case
5 was in fact discovery when the global pandemic hit,
6 and my understanding was it was delayed
7 significantly as a result of that.

8 THE COURT: Okay.

9 MR. JACOB: And a key difference here is
10 that we have the guidance from Judge Carter on what
11 materiality is, and we agree with your suggestion
12 earlier that the guidance, for example, speaks for
13 itself and that these internal probings of, you
14 know, every piece of paper at CMS with low-level
15 employees don't bear on the issue of materiality.

16 You know, Judge Carter explained the three
17 factors. Only one of them requires discovery, in
18 our view, which is the Government's response to
19 noncompliance with the relevant contractual,
20 statutory, and regulatory provision. And we're
21 going to provide them with significant discovery.
22 We're going to use that *Poehling* production and
23 provide significant discovery that will overlap
24 significantly with the *Poehling* case.

25 But there are -- we can't just hand over

1 the *Poehling* productions for a couple of reasons:
2 One, embedded in those productions is sensitive and
3 proprietary data and communications related to
4 United, Anthem's competitor.

5 THE COURT: Okay.

6 MR. JACOB: Also, the Government asserted
7 privileges that were overruled in that case. We
8 intend to still assert those executive privileges
9 here that we think both the parties should not even
10 need to get into because those issues are not
11 relevant. But, for example, the Government has a
12 deliberative process, privilege related, as you're
13 well aware.

14 THE COURT: Yes.

15 MR. JACOB: I'm sure.

16 THE COURT: So you are anticipating some
17 privilege motions involving deliberative process?

18 MR. JACOB: Yeah. And our view is it's not
19 even relevant, right, the lead up to the formulation
20 of a rule.

21 THE COURT: Right.

22 MR. JACOB: The 2014 rule that they cite,
23 the Government explains why they didn't adopt it.
24 So, sure, they have their legal defenses. They can
25 make that on summary judgment.

1 THE COURT: Right.

2 MR. JACOB: We just don't think we need
3 discovery on that.

4 THE COURT: Right.

5 So one question I have for you, though:
6 Can't you at least provide a list of who was deposed
7 from the Government? I mean, you could see if
8 there's overlap there.

9 MR. JACOB: Yeah. We're happy to provide
10 that list.

11 THE COURT: Because there may be deposition
12 transcripts where you could redact. If there's
13 proprietary information of United, you might be able
14 to redact that and then just produce the deposition
15 transcripts.

16 MR. JACOB: I agree with that, Your Honor.

17 THE COURT: So that would be something that
18 would, I'm sure, accelerate the discovery process,
19 and that would also save Anthem costs. So I think
20 Anthem is not going to have an issue with redacting
21 its competitor's proprietary information.

22 Is that fair to say? I mean, maybe you'd
23 like it.

24 MR. BLALACK: Well, let me say this: I
25 think it depends on what the information is. Part

1 of what we're going to be looking for are
2 communications between our competitors and the
3 Government about the very issue here.

4 THE COURT: Why?

5 MR. BLALACK: Because it's going to show
6 that the Government thought this practice was just
7 fine and had no objections and certainly didn't seek
8 to recover payment based on this practice. This was
9 not a secret. This was an open industry practice,
10 widely known, discussed --

11 THE COURT: Why don't you just subpoena
12 somebody from your competitor?

13 MR. BLALACK: Well, I suppose we can do
14 that, Your Honor, but the Government has the records
15 showing the communications with the United States,
16 and the United States is the key because we want to
17 be able to -- you're talking about witnesses. I
18 could get a list of 40 witnesses of people that were
19 deposed from the Government in that case. Some of
20 them will be people I know that we want to depose
21 because I just know enough about their role. Some
22 of them might not.

23 So it's going to depend on what the
24 documentary record says to help us refine who those
25 witnesses are within the United States that we want

1 to depose. Some of them I know I can look at and
2 tell you right now we're going to want to depose.
3 Some of them, I might not.

4 So I do think there will be information
5 that competitors produce to the Government where
6 we'd be able to, after we met and confer, say we
7 don't need to see that; we can redact it or withhold
8 it, depending on what it is. But it's not going to
9 be the case that everything that involves a
10 competitor is irrelevant in the case.

11 THE COURT: Well, we'll have to, you know,
12 deal with that when it comes up because maybe there
13 needs to be attorneys' eyes only. Maybe there needs
14 to be permission from the competitor, you know, for
15 release of some depo transcripts.

16 MR. BLALACK: And we're fine with that,
17 Your Honor.

18 THE COURT: Something of that sort.

19 I do want to just caution both sides that
20 I'm going to enforce Rule 34 as amended with
21 proportionality. So I am urging the parties, urging
22 them to tailor the document requests. I don't want
23 to see all kinds of any and all with a long list of
24 things. It sounds like both sides are quite
25 familiar with the issues here, and you should be

1 very able to be precise in your document requests.

2 And I don't want a lot of overlap of the
3 document requests. So if you've already served a
4 hundred document requests, I don't think that you
5 need to serve anymore for quite some time. So be
6 judicious in how you are requesting documents and
7 tailoring.

8 And I also want to advise the parties that
9 in responding to document requests, I don't want to
10 hear just an objection, or it's too narrow. Suggest
11 something that you will produce, what you can
12 produce, what is reasonable and proportional and
13 why. I expect that kind of dialogue.

14 Both parties are, you know, quite able,
15 capable litigators. That's what I want to see. I
16 don't want to see fights where you haven't fully
17 developed whether there's something that is -- that
18 you could work out between these. And I don't want
19 you to be starting with things that are grossly over
20 broad. If I see those in this case, I'm just going
21 to strike them down. Okay?

22 Particularly with the caliber of lawyers in
23 this case, that should now -- I shouldn't be seeing
24 disputes over that kind of document request. So I
25 am expecting meet and confers and focus on

1 proportionality.

2 Okay. So you've already talked about a
3 protective order and ESI protocol, but you're not
4 done with that yet?

5 MR. JACOB: We're not done. We've
6 exchanged drafts, and we're in the process of
7 negotiating.

8 THE COURT: Okay. I have a sample
9 confidentiality order. You may need to have some
10 tweaks to that, but --

11 MR. JACOB: That's precisely what the
12 Government has worked off of, Your Honor.

13 THE COURT: Okay. Good. Because that
14 works in most cases with some tweaks.

15 MR. JACOB: We agree.

16 THE COURT: And if you want to be more
17 specific about clawbacks, for example, or the timing
18 of clawbacks, you can think about that and put that
19 in. I have sort of a standard 502(D) provision, but
20 if you want to -- I think it's sufficient. But what
21 might not be sufficient is clawback -- I don't want
22 to have a dispute coming up about clawbacks a week
23 before a deposition when the parties have planned
24 things.

25 That, you know, can create a lot of issues

1 in these kinds of cases when you have a lot of
2 deposition like that. So if you want to add
3 something like that, you should maybe think about
4 that.

5 And for the ESI protocol, I suggest that
6 you think about that more iteratively because you
7 may not anticipate everything. You might want to
8 have a more general ESI kind of protocol, and then,
9 as you see the data, you can then have a
10 conversation about further refining it. Sometimes
11 overly detailed -- I don't want you to spend an
12 undue amount of time on the ESI protocol before you
13 actually see some data. It sometimes can work
14 against the parties that way.

15 Okay. I'd like you to try to get the
16 protective order and the ESI protocol in place for
17 submission by the end of this month. I think that
18 should be doable.

19 Now, there are a couple of disputes here
20 that you wrote were anticipated: Anthem's request
21 for an additional early Rule 30(b)(6) deposition and
22 its request to propound five contingent
23 interrogatories. I guess I want to understand from
24 Anthem first what it is seeking, and then I'll hear
25 from the Government.

1 MR. BLALACK: Thank you, Your Honor.

2 So the first issue is we would simply like
3 to take an early exploratory deposition of the
4 United States focused on the key division's
5 personnel who were involved in the decisions that
6 we're going to be pursuing discovery related to for
7 materiality and knowledge.

8 And so the goal here is there is some
9 question in the case law whether we need leave to do
10 that. We have told the Government we will only do
11 it by leave, and under the case law, it states that
12 leave should be granted if it's otherwise permitted
13 in Rule 26(B). We have told the Government we will
14 share with them a draft of the notice without
15 serving it so that they can look at it and react to
16 it and give us their feedback. And then our hope is
17 that we can work out an agreement in advance,
18 consent, and just do it without a contested motion.

19 THE COURT: But aren't there organizational
20 charts? I mean, don't you know who the key people
21 are?

22 MR. BLALACK: We don't, Your Honor. And we
23 certainly don't have a sense of the functional
24 responsibilities and reporting roles of the key
25 people. This is an issue we just litigated in our

1 case in the Northern District of California.

2 THE COURT: But how do you not know this if
3 you have been involved in other litigations
4 involving similar -- aren't the Government officials
5 who are involved known?

6 MR. BLALACK: Well, the standards -- we
7 haven't been involved in the *Poehling* case, Your
8 Honor. That's the *United* case. We've just observed
9 that from afar, watching the record. We've been
10 involved in the case involving risk adjustment
11 submissions against Kaiser. And, in fact, the
12 magistrate judge in that case just authorized us,
13 over the Government's objection, to take an early
14 30(b) (6) on organizational and reporting issues for
15 the simple reason that it will help make future
16 discovery requests more tailored and focused, which
17 the Court noted on the record numerous times.

18 THE COURT: Well, how much overlap is there
19 for the 30(b) (6) that you're going to be taking in
20 this case? Why can't --

21 MR. BLALACK: I think there might be some,
22 but it won't be perfect, Your Honor, because the
23 standards that are in dispute in the *Kaiser* case are
24 not the exact same standards as in dispute in this
25 case.

1 THE COURT: Yeah, but you're just talking
2 about -- this is just organizational reporting and
3 foundational issues.

4 MR. BLALACK: Related to the standards that
5 are going to be the dispute in the case. So we're
6 not just going to take a general "Tell us how CMS
7 works" type of deposition. It's the people who are
8 involved in the actual standards and administering
9 the discrete standards governing the practice at
10 issue in this case, which is not --

11 THE COURT: Well, when is that one going to
12 be taken?

13 MR. BLALACK: Well, we are supposed to have
14 an agreement back to the magistrate by Friday, so
15 hopefully we'll get that deposition in the next
16 month.

17 THE COURT: Okay. So why shouldn't you
18 just wait until you take that deposition, see what
19 you can use, and then see about what remains?

20 MR. BLALACK: That might very well help
21 narrow the dispute. We're not adverse to that, Your
22 Honor, at all.

23 THE COURT: I think that probably makes
24 sense.

25 MR. BLALACK: That's fine with us. But

1 we -- I wouldn't expect us to have worked out the
2 meet and confer process with the United States on
3 the 30(b) (6) anyway to either get to an impasse or
4 get to an agreement for a few weeks. We're going to
5 send them the draft notice probably early next week.
6 They'll look at it. We'll talk. So hopefully we'll
7 either get to --

8 THE COURT: Well, how much is it going to
9 be identical to the notice in the other case?

10 MR. BLALACK: The basic types of questions
11 or topics will be the same, but the standards will
12 be different. Many of them will be different. So
13 the people implicated may be different. That's why.

14 THE COURT: Maybe.

15 MR. BLALACK: Divisions and people.

16 We'll see. I can't speak until I get the
17 testimony. And if there's testimony in that case
18 that covers this case, and the United States, in
19 this case, is comfortable allowing us to use it in
20 this case to focus --

21 THE COURT: I mean, why couldn't you
22 cooperate? If it's the same witnesses, if the
23 Government can see the deposition notice in that
24 other case that was permitted, and it's the same
25 people being designated that would be designated in

1 yours, maybe you could accelerate that, and you
2 could agree just to use that deposition for both
3 cases.

4 Doesn't that save a lot of time?

5 MR. BLALACK: Well, if the United States
6 will tell us that the people who are involved with
7 the standards dispute in this case are the same
8 people involved there, and we can -- are permitted
9 by agreement of all the lawyers on both cases to
10 cover these issues in that deposition, we're not
11 averse to that, as long as we have adequate time.

12 So it's not like we're trying to be overly
13 formalistic. It's just I have no indication from
14 the United States that they're open to us using --
15 on either case, using that deposition in this case,
16 or any assurance that the people who would be
17 testifying in that 30(b)(6) would have the knowledge
18 about the standards -- who was involved with the
19 standards at issue in this case. I just don't know
20 the answer to that, Your Honor, which is why we hope
21 the meet and confer process can help resolve that.

22 THE COURT: And what about these contention
23 interrogatories? Because those interrogatories are
24 really not that useful, honestly.

25 MR. BLALACK: Yeah. Well, these aren't

1 just ordinary "Tell us why you were damaged" type
2 interrogatories. These are the core issue in the
3 case. So the interrogatories we're talking about --

4 THE COURT: Isn't it obvious?

5 MR. BLALACK: No, it's not.

6 THE COURT: The Government is saying that
7 it paid more money than it should have.

8 MR. BLALACK: We don't know what the false
9 claims are. We don't -- I can't tell you -- I
10 couldn't go pick up what is the claim for payment
11 that the United States contends we submitted to CMS
12 that was false, I couldn't tell you why they think
13 it was false, and I couldn't tell you how much
14 overpayment they claim the United States suffered as
15 a result of the submission of that false claim.

16 So our goal is to get some very basic
17 understanding of what their theory of liability is
18 around the actual false claims they've identified.
19 Now, we've, again, talked with the United States
20 about this already, told them we'd share a draft of
21 the rogs in advance before serving them so they
22 could react, because we'd like their consent to
23 this. We think this will be to their benefit and
24 ours and the Court's to make the process going
25 forward more efficient.

1 And, in fact, these interrogatories I'm
2 talking about, Your Honor, to give you a sense, we
3 did serve in the Northern District of California
4 case.

5 THE COURT: And did you get answers?

6 MR. BLALACK: Yes, but they wouldn't answer
7 this case because this is specific to Anthem. So
8 the claims for payment that Anthem supposedly
9 submitted and they're supposedly false and why
10 they're false and what the financial injury is,
11 nothing in those cases speak to that.

12 Now, those cases -- in both of those cases,
13 the United States did answer those interrogatories
14 and they are useful in telling the parties and the
15 Court here's what the Government thinks is the
16 relevant theory of liability for a claim for payment
17 under the False Claims Act, and they point to the
18 complaint. The complaint doesn't answer this
19 question for us.

20 And we've told them we'll meet and confer
21 after we send them the draft, and we're not seeking,
22 like, a definitive list of every potential false
23 claim they might allege by the time discovery is
24 over. We understand they contend that there are
25 false claims that they have yet to identify.

1 They'll be absolutely entitled -- and we told them
2 this. They'll be absolutely entitled to amend their
3 list at some later date.

4 But whatever false claims they have
5 identified as part of their Rule 11 process for
6 filing this complaint as part of their multi-year
7 investigation that they know of today, we ought to
8 know what those are and what their allegations are.

9 THE COURT: You're not going to get that in
10 documents that are produced?

11 MR. BLALACK: No, we will not. We will not
12 be able to tell from a document request what the
13 claim for payment is and what they contend was false
14 about it or what the amount of damage is from that.

15 THE COURT: Okay. Let me hear from the
16 Government on that issue.

17 MR. JACOB: Thank you, Your Honor.

18 First, on the 30(b)(6), our view is just
19 give us a chance to give them the information they
20 need or they would like. We produced last week,
21 after they raised this issue, about 2,500 pages of
22 work charts and other similar function statements of
23 various CMS components. We've suggested to them
24 that we rely on this upcoming 30(b)(6) to see what
25 information was testified there.

1 THE COURT: In the other case?

2 MR. JACOB: In the other case.

3 And supply them, whether formally or
4 informally, with the transcript. Whatever it is.
5 Just get them the information from that deposition,
6 answer whatever interrogatories they have now in
7 writing, and then see where we are. We have
8 concerns. You know, we just want to do it the most
9 efficient way.

10 A 30(b)(6), you know, we just don't think,
11 based on our initial consultations with CMS, there's
12 even going to be one employee that knows the
13 document storage practices of each component of CMS.

14 THE COURT: Right.

15 MR. JACOB: So then we're just, you know,
16 educating them on each specific issue. So why not
17 just answer it in writing and give them the
18 information, the documents they need. So that's our
19 view on that, that it's premature. Let's see where
20 we are after we've gone through early discovery.

21 On the contention interrogatory part, we're
22 happy to identify the false claims of -- the theory
23 of the false claims. That's what they're concerned
24 about. There are two sets of false claims here.
25 There are annual attestations that Anthem submitted

1 to CMS about the accuracy of the data. We can
2 identify those and produce those to Anthem in short
3 order. We're already collecting those contracts
4 now. We're in the process.

5 THE COURT: And when you produce them, you
6 can say this is the group of attestations that
7 comprise the basis for your action?

8 MR. JACOB: Yes, for this bucket of false
9 claims, yeah. And the second bucket are the
10 diagnosis codes that they failed to delete, the ones
11 that, in our view, they learned through the chart
12 review program were not supported. We need that
13 data for that. But we're happy to articulate the
14 basis and the process by which we are intending to
15 go about identifying those false claims through the
16 data, the methodology. And, you know, we can do
17 that in short order too. So we think this -- you
18 know, we're happy to --

19 THE COURT: And how would you do that?

20 MR. JACOB: How would we do that?

21 THE COURT: How would you articulate that?
22 In response to an interrogatory? In just a letter?
23 How are you proposing to do that?

24 MR. JACOB: We can do it in a letter. I
25 mean, if it moves this issue, it might be easier.

1 But, for example, our view of the case is that the
2 chart reviewers who did this blind did not identify
3 diagnoses that Anthem had previously submitted to
4 CMS.

5 And so, in our view, based on all of the
6 other evidence that we've been collecting in the
7 investigation and intend to obtain through
8 discovery, Anthem knew that those codes it had
9 previously submitted, not identified through the
10 chart review program, were unsupported. And those
11 codes led to additional and significant payments to
12 Anthem, and Anthem didn't do anything about it.

13 They didn't delete those codes. They
14 continued to sign their annual attestations. So
15 we're going to go through a process in discovery of
16 comparing what the chart review identified as
17 compared to what Anthem had originally submitted to
18 identify those gaps.

19 THE COURT: Right.

20 And that's through the database?

21 MR. JACOB: That's through the database.

22 THE COURT: Which you need right away?

23 That has to be accelerated for production?

24 MR. JACOB: That's project one for us, yes.

25 THE COURT: Okay. All right. I believe

1 that that's the most important piece of discovery
2 that needs to be in exchange, in terms of documents.
3 The database is going to be really core. And so
4 that process should be front loaded because it
5 takes -- my experience with databases, it takes a
6 while to get that produced, and then get -- for your
7 independent people to get their arms around that
8 data and to work out any, you know, idiosyncrasies
9 in the database. They take a long time.

10 So I want the parties to front load
11 production of that database. That's got to be ASAP.
12 Before emails or whatever, you need to be getting
13 that database figured out, what you're doing,
14 because there will be a lot of questions about data
15 mapping, data dictionaries, what have you. There
16 may be codes that are inconsistent, all kinds of
17 things.

18 So that, in my view, is going to take a lot
19 of time. And that's where, really, the core
20 information is going to be in this case. So I want
21 you to focus on getting that database produced
22 upfront.

23 In terms of the 30(b)(6) deposition, at the
24 moment, I don't think it's warranted. I think first
25 you need to take the 30(b)(6) deposition in the

1 other case. I have no objection to Anthem providing
2 the form of notice that it provided in the other
3 case so that the Government sees the questions. And
4 if there are variations in what you would want in
5 this case, go ahead and provide that so the
6 Government can see that.

7 But the Government may be able to say these
8 documents answer these questions. See what you get
9 in the other case and what can be used before you
10 bring it -- before you bring it to me for another
11 deposition. One is not going to be scheduled right
12 now until, you know, that information comes through
13 because it can be a real waste of time to have a
14 30(b) (6), especially where there's multiple
15 witnesses, and you may just be able to get an
16 adequate explanation through the documents and
17 through the meet and confer process for some of
18 these issues.

19 In terms of the early interrogatories, I
20 don't think interrogatories -- contingent
21 interrogatories have that much utility, honestly.
22 I'm not inclined to grant early contingent
23 interrogatories. Instead, I think that the
24 Government should provide the information that it is
25 suggesting, and that way, plaintiffs will have that

1 information, and you may be able to more carefully
2 tailor a request once you're informed.

3 The Government is not trying to hide the
4 ball. It will provide you that information, and
5 then you can think about a contention interrogatory.
6 But I don't think one should be propounded at this
7 moment. First, have some back and forth. It can be
8 through a letter, it can be through identification
9 of specific documents, and then you can be more
10 specific and more tailored in what you actually
11 need. Okay?

12 But I expect a lot of cooperation,
13 including, if there's efficiencies that could be
14 gained in these other cases, I want you to seek to
15 gain those efficiencies in this case.

16 Okay. So in terms of the schedule, the
17 Government is proposing one year, essentially, a
18 little more than a year, 15 months, discovery
19 schedule. And Anthem is proposing almost twice
20 that. I don't have a good sense yet from what I've
21 heard today on how much efficiencies can be gained
22 through these other cases. It sounds like maybe a
23 lot.

24 So at the moment, I'm going to set the --
25 I'll set the end of June of 2024. The Government

1 says June 11, but I'll do June 30. Whatever's the
2 weekday at the end of 2024 as the end of fact
3 discovery. And like I say, we're going to have
4 monthly conferences. So if there's a need to extend
5 that schedule, if it makes sense, we can talk about
6 that.

7 In terms of the expert discovery Anthem
8 set, you're anticipating maybe four expert
9 witnesses?

10 MR. BLALACK: We're still in that process,
11 but in that ballpark, Your Honor.

12 THE COURT: And the same for the
13 Government?

14 MR. JACOB: We may need rebuttal witnesses,
15 therefore, but as far as principal witnesses, only
16 one.

17 THE COURT: Right. Okay. So I'm going to
18 set the end of February 2025 for close of expert
19 discovery. And, again, since I'll be seeing you, if
20 that needs to be extended, we can do that. I want
21 you to endeavor, like I said, to have conversations
22 with each other, keep an open dialogue, and work
23 cooperatively to gain efficiencies in the case.

24 What I'm going to do is I'll work with my
25 deputy to get monthly conference dates, and I want

1 you to propose an agenda in a letter, a joint
2 letter, three days before the -- three business days
3 before the conference. And like I say, don't turn
4 them into briefs. Just state your position simply.
5 And if we need additional briefing, we can set it at
6 the conference.

7 I hope to avoid that, if possible. I want
8 the parties to be practical in how they're
9 approaching discovery. So I'll work with my deputy,
10 and we'll get some dates on the calendar.

11 Now, in terms of settlement, has the
12 Government made a settlement proposal? Does it
13 involve changes? Would any settlement involve -- I
14 assume money.

15 But, also, would it involve changes to this
16 process?

17 MR. JACOB: Principally money. Our
18 understanding is that the chart review program as
19 designed is no longer in existence.

20 THE COURT: I see.

21 MR. JACOB: So, principally, it would be
22 money. We're prepared to make a demand based on the
23 information we have. Anthem has requested that we
24 supply, for example, the basis of every false claim,
25 which we're just not in a position to do without

1 discovery. But if Anthem -- if you would think it
2 would facilitate the process to prepare a demand, we
3 can easily do so.

4 THE COURT: Well, I think you should
5 prepare a demand at the outset because Anthem ought
6 to know what it is.

7 MR. JACOB: Okay. We're happy to do so.

8 THE COURT: So go ahead, prepare that
9 demand.

10 MR. JACOB: Yeah.

11 THE COURT: And that also will, frankly,
12 give Anthem some information it was seeking through
13 an interrogatory. You'll have some idea. So
14 prepare a demand, and then, you know, you can
15 exchange some information, and we'll revisit when to
16 schedule a settlement conference. But Anthem is
17 going to have to digest whatever demand you put
18 together.

19 So for now, I'm expecting a proposed
20 protective order, ESI protocol, by the end of this
21 month, and we'll set some dates going forward. I
22 don't want any motions filed. Like I say, just
23 letters or just in the agenda letters, and then
24 we'll deal with any motions. But don't file any
25 motions without first reviewing it in a conference.

1 Okay?

2 Anything further from the Government?

3 MR. JACOB: Nothing from the Government.

4 Thank you, Your Honor.

5 THE COURT: All right. Anything further
6 from Anthem?

7 MR. BLALACK: No, Your Honor. Thank you.

8 THE COURT: Okay. Thanks, everyone. We're
9 adjourned.

10 MR. BLALACK: Thank you.

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1 C E R T I F I C A T E

2
3 I, Marissa Mignano, certify that the foregoing
4 transcript of proceedings in the case of
5 UNITED STATES OF AMERICA v. ANTHEM, INC., Docket
6 #1:20-cv-02593, was prepared using digital
7 transcription software and is
8 a true and accurate record of the proceedings.

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Signature Marissa Mignano

Marissa Mignano

Date: April 12, 2023